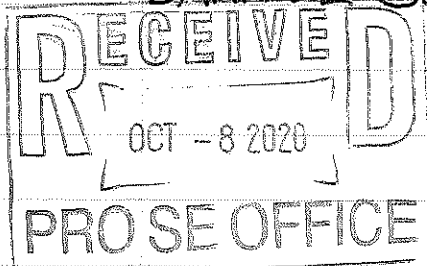


IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

DARRELL GUNN, 03-B-2443,



Plaintiff,

AMENDED
COMPLAINT

CIVIL ACTION

- Versus -

CASE NO. :
20 Civ. 1787 (PMH)

Nurse, DONNA COLLINS,
CO, ESPOSITO,
CO FINN,

JURY TRIAL
DEMANDED

Nurse DAVE LINDEMANN,
CO KENDRE LYONS,

Sergeant D. MAZZELLA,

Sergeant D. MALARK,

Sergeant STEPHAN PIETRE,

Sergeant W. ROSE, JR.,

Nurse CARRIE SOLTISH,

Defendant(s).

Page 2

JURISDICTION AND VENUE

1. Plaintiff institutes these proceedings and invokes the jurisdiction of this Court under and by virtue of 28 U.S.C. 1331 and 1343 (3) and (4). Plaintiff seeks declaratory relief pursuant to 28 U.S.C. sections 2201 and 2202. Plaintiff's claims for injunctive relief are authorized by 28 U.S.C. sections 2283 and 2284 and Rule 65 of the Federal Rule of Civil Procedure.

2. The Court has Supplemental jurisdiction over the plaintiff's state law tort claim under U.S.C. sections 1346 (b) and

Page 3

1367,

3. The United States District Court, Southern District of New York is an appropriate venue under 28 U.S.C. Section 1391 (b)(2) because it is where the events giving rise to this claim occurred.

PLAINTIFF

4. Plaintiff, Darrell Gunn, D.I.N. 03-B-2443 is a citizen of the United States of America and was at all times relevant herein a prisoner of the New York State Department of Corrections and Community Supervision, incarcerated

Page 4
at Sing Sing Correctional Facility, 354
Hunter Street, Ossining, New York
10562-5442.

DEFENDANTS

5. Defendant, Donna Collins, nurse, was at all times relevant a duly appointed, qualified and acting DeWitt State Correctional facility nurse of the New York State Department of corrections and community supervision (hereinafter N.Y.S.D.O.C.C.S.),

6. Defendant, Correction officer Esposito was at all times relevant herein a duly appointed,

Page 5

qualified and acting Down State
Correction Officer of the N.Y.S.D.O.C.C.S.

7. Defendant, Correction
Officer FINN was at all times
relevant herein a duly appointed
qualified and acting Green Haven
Correction Officer assigned to transport
plaintiff back from Down State Cor-
rectional Facility to Green Haven
Correctional Facility with his partner
of the N.Y.S.D.O.C.C.S.

8. Defendant, Nurse Dave
LINDEMANN was at all times relevant
herein a duly appointed, qualified and
acting Green Haven Correctional Facility
nurse of the N.Y.S.D.O.C.C.S.

Page 6

9. Defendant, Correction

Officer KENDRE LYONS was at all times relevant herein a duly appointed, qualified and acting Down State Correction Officer of the N.Y.S.D.O.C.C.S.

10. Defendant, Sergeant

MALARK was at all times relevant a duly appointed, qualified and acting Green Haven Correctional Facility Sergeant of the N.Y.S.D.O.C.C.S.

11. Defendant, Sergeant

MAZZELLA was at all times relevant a duly appointed, qualified and acting Green Haven Correctional Facility Sergeant of the N.Y.S.D.O.C.C.S.

Page 7

12. Defendant, Sergeant

STEPHAN PIETRE was at all times relevant a duly appointed, qualified and acting Down State Correctional Facility Sergeant of the N.Y.S.D.O.C.C.S.

13. Defendant, Sergeant

W. ROSE, JR., was at all times relevant a duly appointed, qualified and acting Green Haven Correctional Facility Sergeant of the N.Y.S.D.O.C.C.S.

14. Defendant, Nurse

Carrie SOLTICE was at all times relevant a duly appointed, qualified and acting Green Haven Correctional Facility nurse of the N.Y.S.D.O.C.C.S.

Page 8

15.

Defendant(s)

N.Y.S.D.O.C.C.S. is and was at all times relevant herein a division of the government of New York State.

16.

Defendant(s) Nurse

Donna Collins, CO ESposito, CO Finn, nurse Dave Lindemann, CO Kendre Lyons, Sergeant D. Malark, Sergeant D. Mazzella, Sergeant Stephan Pietre, Sergeant W. Roser, Jr., nurse Carrie Soltish are sued individually and in their official capacities. Relief is sought against each and all defendants as well as their agents, assistants, successor, employees and persons acting in

Page 9

concert or cooperation with them or
at their direction or under
supervision.

17. At all times
relevant herein, the defendant(s) nurse
Donna Collins, CO Esposito, CO Finn,
nurse Dave Lindemann, CO Kendre
Lyons, Sergeant D. Malark, Sergeant
D. Mazzella, Sergeant Stephan
Pietre, Sergeant W. Roser, Jr. and
nurse Carrie Soltish and their agents,
assistants and employees acted
pursuant to the policies, regulations
or decisions officially adopted or
promulgated by those in the Department
of Corrections and Community Supervision

Page 10

whose acts may fairly be said to represent official policy or were pursuant to governmental custom of the Department of Corrections and Community Supervision.

18. At all times relevant herein defendant(s) have acted under the color of authority of the law of New York State or in active concert with such defendant(s) who are so acting.

FACTS

19. That on June 2, 2017 plaintiff was transferred to Down State Correctional Facility

Page 11

Residential Crisis Treatment Program (RCTP), for Severe mental health paranoias and or mental illness.

20. That on same day plaintiff went on Hunger Strike at Down State Correctional Facility.

21. That on June 5, 2017 plaintiff was cleared with no examine of Mental Health Unit to be transported back to Green Haven Correctional Facility.

22. That plaintiff was too weak to walk from his cell to transport area.

23. That escort Sgt. Stephan Pietre and CO Kendre

Page 12
Lyons dragged plaintiff to clinic to get his vital signs checked.

24. That en route to clinic plaintiff collapsed in Main Hallway when he could no longer walk or be dragged.

25. That then plaintiff was kicked in left leg by Sgt. Stephan Pietre then handcuffed while Sgt. Stephan Pietre states: "you're not going to pull that I can't walk shit here where there is cameras!"

26. That, hereupon, plaintiff was lifted up by both Sgt. Stephan and CO Kendre Lyons by the handcuffed wrist and they both dragged plaintiff

Page 13

into stairwell and kept dragging him forcefully and brutally without good-faith effort and the help of CO ESposito, injuring both plaintiff's feet, legs, shoulder, arms, elbows, back, neck, groin, wrists, hands, and head.

27. That when we reached a flat level -- to increase plaintiff's pain Sgt. Stephan Pietre twisted plaintiff's handcuffed wrist further in the opposite direction in order to make plaintiff walk albeit plaintiff had severe pain in his feet.

28. Thereafter, all along while en route Sgt. Stephan Pietre states let's take the stairs to make

Page 14

Sure we will not be seen by the cameras.

29. Then once we made it to clinic. Plaintiff is thrown on to gurney. The force cause handcuffs to tear more into plaintiff's wrist.

30. Hereupon, nurse Donna Collins checked plaintiff's vital signs with deliberate indifference.

31. Keep in mind, Sgt. Stephan Pietre goal was to take plaintiff to clinic to get his vital signs checked because plaintiff could not walk. Plaintiff was too weak to walk out of cell. Plaintiff has not eaten any food whatsoever in 3 days.

Page 15
32. Then mysteriously

and abruptly, plaintiff was removed from the clinic with brutal force again and dragged out by his handcuffed wrist and shoulders to avoid someone entering the clinic.

33. This means these

brazen prison guards repeatedly dragged plaintiff up and down several flight of stairs by the handcuffed wrist and shoulders and then waited in silence in these same staircases until it was safe for plaintiff to be returned back to clinic.

34. Thereupon, plaintiff

was thrown unto gurney again. There,

Page 16

again plaintiff hands and wrist was severely damaged by the force when the handcuffs cut directly into the wrist. The pain was too intense to control. Plaintiff was treated without dignity and decency.

35. There waiting in the clinic to transport plaintiff back to Green Haven was prison guard Finn and his transport partner.

36. Hereupon, plaintiff was stripped frisked and prison guards acknowledged the bruises and severe pain plaintiff was in because of the assault and battery plaintiff experienced. Plaintiff did absolutely

Page 17

nothing wrong to be dehumanized to receive the brutal assault and battery he received from Sgt. Stephan Pietre, CO Kendre LYONS, and CO ESposito accusing plaintiff of doing something wrong.

37. Most of all, plaintiff received no medical attention from Donna Collins, nurse with deliberate indifference from the pain plaintiff is suffering, nonstop headaches, dizziness, fatigue, sharp shooting pain, stiffness in feet, numbness and tingling in toes, hard to walk, bruises both upper and lower extremities, sharp shooting pain, stiffness, pinching

Page 18

and grinding in both shoulders, nausea, blurry vision, pressure on skull, bruises and swelling on wrists, stiffness and sharp shooting pain in neck and back, back of head, front of head, ringing in ears, popping in ears and loss of hearing.

38. That plaintiff arrived at Green Haven Correctional Facility Clinic Nurse Dave Lindemann. made a statement "you are not going to pull that act, Fake hurt like you did at Down State!" And pushed plaintiff against the wall by the throat. Then began yelling and acting belligerent making a disturbance in the Clinic.

39. Also, Nurse Dave

said, "I don't care for you. I always give you a hard time and you're always doing something wrong. I know this is not going to end well but I'm going to take your vital signs."

40. Nurse Dave, whom

is racist and this was his attempt to cover-up the assault and battery. He was being repulsive and insensitive.

41. Then, plaintiff said

"I request to see another nurse, you keep disrespecting."

42.

"This is not get the nurse who you want," said nurse Dave. "Why did you go to Down

Page 20

State?" I don't know, in response, plaintiff said, "Do you take medication? What medication do you take? Plaintiff explained, yes, Topamax and Neurontin. I'd took it this morning. I need to take now but you are too much disrespectful towards me always you keep accusing me of doing something wrong. "I'm making statements," said nurse Dave.

43. "I've been assaulted by prison guards and you keep accusing me of doing something wrong."

44. Then Sgt. W. Roser, Jr., nefariously and racist began yelling at plaintiff for no reason. "We're all men in here." In truth

Page 21

there were all white men. "You can't choose nurses, you have to get the nurse that's treating you. You, can't act like a child. What's your number?" I have an 03B2443 number, plaintiff said in response.

45. "You have an 03 number, you should know what men do," said W. Roser, Jr., sergeant.

46. That this means that, this is Sgt. W. Roser, Jr. personal involvement cloak of ignorance attempt to cover-up the Down State assault and battery plaintiff experienced by letting Nurse Dave simply degrade and dehumanize plaintiff condoning Nurse

Page 22

Dave refusing to allow plaintiff to report the assault and battery.

Hereupon, Nurse Dave refusing to give plaintiff medical treatment for the esoteric "Brotherhood."

47. Keep in mind,

plaintiff was just assaulted and battered and prison guard Finn and his partner already planned a cover-up -- now there were approximately seven prison guards surrounding plaintiff in the clinic. Plaintiff was in fear for his life, health, and safety.

48. With this in mind,

with deliberate indifference C.O. Finn had his hands pointed in plaintiff

Page 23

face telling, plaintiff "you can not talk. Stop talking!"

49. That simultaneously, Nurse Dave was telling plaintiff "do not talk, do not talk."

50. Meanwhile, Nurse Dave grabbed plaintiff hand stating "Keep your hands to your side!"

51. Thereupon, when plaintiff moved his hands both nurse Dave would grab plaintiff's sore hand and threaten plaintiff "I told you not to move your hand!; and CO Finn would grab the other hand and state "do not move your hand again!" Hereupon, placing plaintiff's sore hand

Page 24

down on leg with force like he did something wrong.

52. All things considered, plaintiff was treated unfairly without dignity and decency in other words it was subliminal racism. I was treated differently. I received no medical treatment for my injuries.

53. That on June 6, 2017 plaintiff handed his Emergency Sickcall Slip to First Prison Guard in E-Block.

54. The First Prison Guard response was, "this is an assault. My supervisor will be coming to your cell to talk to you."

55. That plaintiff waited and no sergeant showed up for investigation.

56. That D. Mazzella, Sergeant refused to investigate plaintiff being battered and assaulted and being denied medical treatment.

57. That on June 7, 2017 D. Malark, Sergeant and Carrie Soltish failed to notify a doctor after taking photographs of bruises and injuries.

58. That plaintiff requested to see a doctor and got a threat from D. Malark, Sergeant "if I have to come in the block to see you there's going to be problems."

Page 26

EXHAUSTION OF LEGAL REMEDIES

59. That plaintiff DARRELL GUNN 03-B-2443, used the prisoner grievance procedure available at Green Haven Correctional Facility to try and solve the problem. On July 17, 2017 plaintiff DARRELL GUNN, 03-B-2443 presented the facts relating to this complaint. On July 26, 2017, plaintiff Darrell Gunn 03-B-2443 was sent a response saying that the grievance had been untimely submitted.

60. That plaintiff DARRELL GUNN 03-B-2443, used the prisoner grievance procedure available at

Page 27

Green Haven Correctional Facility to try and solve the problem. On July 17, 2017 plaintiff Darrell Gunn, O3-B-2443 presented the facts relating to this complaint. Plaintiff Darrell Gunn O3-B-2443 was sent no response.

61. That plaintiff Darrell Gunn O3-B-2443 used the prisoner grievance procedure available at Green Haven Correctional Facility to try and solve the problem. On July 10, 2017 Darrell Gunn O3-B-2443 presented the facts relating to this complaint. Plaintiff Darrell Gunn O3-B-2443 was sent no response.

Page 28

LEGAL CLAIMS

62. Plaintiff reallege and incorporate by reference paragraphs 1-59.

63. That defendants sergeant Stephan Pietre, CO ESposito, and CO Kendre Lyons, have no respect for the rule of law causing plaintiff civil rights being infringed upon in violation of the United States of America Constitution Eighth Amendment

64. Which means that, defendants, sergeant Stephan Pietre, CO ESposito, and CO Kendre Lyons egregious behavior and incorrigible

Page 31

not above the law and accountable to legitimate penological interests, correctional goals and institutional policy.

67. That plaintiff has no plain, adequate or complete remedy at law to redress the wrongs described herein. Plaintiff has been and will continue to be irreparably harmed by the conduct of the defendant(s) unless this Court grants the declaratory and injunctive relief which plaintiff seeks.

PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully prays that this Court enter judgment

granting plaintiff:

68. A declaration that the acts and Omissions described herein violated plaintiff's rights under the constitution and the laws of the United States.

69. Compensatory damage in the amount of \$1,000,000 against defendants Nurse Donna Collins, CO Esposito, CO Finn, Nurse Dave Lindemann, CO Kendre Lyons, Sergeant D. Malark, Sergeant D. Mazzella, Sergeant Stephan Pietre, Sergeant W. Raser, Jr., and Nurse Carrie Soltish.

70. Punitive damages in the amount of \$1,000,000 against defendants Nurse Collins, CO Esposito, CO Finn, Nurse Dave Lindemann,

Page 33

CO Kendre Lyons, Sergeant D.

Malark, Sergeant D. Mazzella, Sergeant
Stephan Pietre, Sergeant W. Roser, Jr.,
and Nurse Carrie Soltish.

71. A jury trial on all issues
triable by jury.

72. Plaintiff costs in this suit.

73. Any additional relief this
Court deems just and proper and
equitable.

Dated: October 5, 2020
Ossining, New York

Respectfully submitted,

Darrell Gunn 03-B-2443
DARRELL GUNN 03-B-2443
Sing Sing Correctional Facility
354 Hunter Street
Ossining, New York 10562-5442

VERIFICATION

I have read the foregoing complaint and hereby verify that matters alleged therein are true, except as to matters alleged on information and belief, and, as to those, I believe them to be true, I certify under penalty of perjury that the foregoing is true and correct. Executed at Ossining, New York on October 5, 2020.

Darrell Gunn 03-B-2443
DARRELL GUNN, 03-B-2443

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DARRELL GUNN, 03-B-2443,
Plaintiff,

PROOF
OF
SERVICE

-VERSUS-

CASE NUMBER
20 CIV. 1787 (PMH)

Nurse Donna Collins,
CO ESPOSITO,
CO FINN,
Nurse Dave LINDEMANN,
CO KENDRE LYONS,
Sergeant D. MALARK,
Sergeant D. MAZZELLA,
Sergeant STEPHAN PIETRE,
Sergeant W. ROSE, JR.,
Nurse CARRIE SOLTISH,

Defendant(s).

DARRELL GUNN, 03-B-2443

declares under penalty of perjury pursuant to
28 U.S.C. section 1746 that he mailed a copy

Page 2

of the enclosed AMENDED
COMPLAINT and PROOF OF
SERVICE to defendants' attorney
Letitia James Attorney General of
the State of New York, Office of the
Attorney General, 28 Liberty Street,
New York, New York 10005 by placing
them in an sealed wrapper and placing
the envelope in the B-Block Mess Hall
"Bridge" Legal Mail Box at Sing Sing
Correctional Facility, 354 Hunter Street,
Ossining, New York 10562 and that
there is a regularly established route
between said addresses and Ossining,
New York.

Date: October 5, 2020
Ossining, New York

Darrell Gurn
Darrell Gurn 03-B243
Plaintiff-PRO SE

Darrell Gunn 03-B-2443
Sing Sing Correctional Institute
354 Hunts
Ossining, NY 10500

NEOPOST FIRST-CLASS MAIL

10/05/2020

POSTAGE \$002.00

ZIP 10562
041M11288353

RECEIVED

OCT 07 2020

CLERK'S OFFICE
SD.N.Y.

CLERK
U.S. District Court
Southern District of NY
U.S. Courthouse
500 Pearl Street
NY NY 10007

SDNY

RECEIVED
OCT - 8 2020

PRO SE OFFICE

Pro Se
JKR

LEGAL MAIL
PRIVILEGED & CONFIDENTIAL